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THIERRY GUETTA a/k/a MR. BRAINWASH
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 GLEN E. FRIEDMAN,

12 Plaintiff,

13 vs.

14 THIERRY GUETTA a/k/a MR.
BRAINWASH, and DOES 1 through
15 10, inclusive,

16 Defendants.

17 AND RELATED COUNTER-CLAIM.
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Case No. CV10-0014 DDP (JCx)

**DEFENDANT THIERRY GUETTA'S
STATEMENT OF GENUINE ISSUES IN
OPPOSITION TO PLAINTIFF GLEN E.
FRIEDMAN'S MOTION FOR SUMMARY
ADJUDICATION**

[FILED CONCURRENTLY WITH OPPOSITION
TO MOTION TO SUMMARY ADJUDICATION;
DECLARATIONS OF THIERRY GUETTA AND
ALAN S. GUTMAN]

**Date: May 9, 2011
Time: 10:00 a.m.
Ctrm: 3**

**HON. DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE**

STATEMENT OF GENUINE ISSUES

Defendant Thierry Guetta ("Guetta") submits this statement of genuine issues pursuant to Central District of California Local Rule 56-2 in opposition to the motion for summary adjudication herein filed by Plaintiff Glen E. Friedman ("Friedman"). Facts 1 through 10 below correspond to the facts and supporting evidence presented in the Statement of Uncontroverted Facts filed by. Friedman. Where appropriate, the facts are followed by additional material facts showing a genuine issue. These are followed by Guetta's additional material facts and supporting evidence showing a genuine issue.

| No. | Friedman's Alleged Uncontroverted Fact and Evidence | Response |
|-----|---|---|
| 1. | Glen E. Friedman created an original photograph of the music group RUN-DMC (the "Subject Image"). Dec Friedman ¶ 2. | Undisputed. |
| 2. | Friedman was the sole author of the Subject Photograph, including selecting the subject matter, arrangement of the parties, angle of the photograph, lighting, composition, framing and determination of the precise time of taking the picture. Dec Friedman ¶ 2. | Disputed. Friedman "quite possibly" told the member on the left (DMC) to cup his fist and could only testify that he "most likely" put the group in their precise pose. The pose of the member on the right of the Photograph (Run) is commonly referred to as the "B-Boy Stance" in hip-hop culture and Friedman testified that he had seen Run posed in the "B-Boy Stance" previously. Deposition of Glen E. |

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| 1 | | Friedman ("Friedman Depo.") |
| 2 | | (attached as Exhibit A to |
| 3 | | Declaration of Alan S. Gutman |
| 4 | | (see ¶ 2), 110:2-5, 111:2-5, |
| 5 | | 116:3-5. |
| 6 | 3. | The Subject Photograph was first published |
| 7 | | in 1994 in the book F*** YOU Heroes, |
| 8 | | authored by Glen Friedman (ISBN-10: |
| 9 | | 096491602.), which was the first public |
| 10 | | distribution of copies of the photograph. |
| 11 | | Dec Friedman ¶ 3. |
| 12 | 4. | Glen E. Friedman was the author of the book |
| 13 | | F*** YOU HEROES as an original work of |
| 14 | | authorship. |
| 15 | | Dec Friedman ¶ 3. |
| 16 | 5. | In March of 2003 Glen E. Friedman applied |
| 17 | | for registration of F*** YOU HEROES and my |
| 18 | | [sic] included photographs with the U.S. |
| 19 | | Copyright Office and was issued Copyright |
| 20 | | Registration Certificates TX 6-612-087 |
| 21 | | effective March 24, 2003. |
| 22 | | Dec Friedman ¶ 3. |
| 23 | 6. | Thierry Guetta copied Glen E. Friedman's |
| 24 | | Subject Photograph in creating the poster |
| 25 | | designated as "Run-DMC Canvas" or "Banner |
| 26 | | Work" Exhibit 7, Bates No. G-41. |
| 27 | | Exhibit 1, Deposition p. 88:17-19; Guetta |
| 28 | | Declaration, ¶ 16, Docket No. 41. |
| | | Disputed. Guetta did not "copy" |
| | | the Subject Photograph and the |
| | | cited evidence does not indicate |
| | | that Guetta "copied" the Subject |
| | | Photograph in creating the poster |
| | | designated as "Run-DMC |

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| 1 | | Canvas” or “Banner Work.” |
| 2 | | Rather, Guetta indicated that |
| 3 | | incorporated certain aspects of |
| 4 | | the Subject Photograph. |
| 5 | | Declaration of Thierry Guetta |
| 6 | | (“Guetta Decl.”), ¶¶ 8, 9, 12, 14 |
| 7 | | 16. |
| 8 | 7. | Disputed. Guetta did not “copy” |
| 9 | Thierry Guetta copied Glen E. Friedman’s | the Subject Photograph and the |
| 10 | Subject Photograph in creating the poster | cited evidence does not indicate |
| 11 | designated as “Fluorescent Graffiti stencil” or | that Guetta “copied” the Subject |
| 12 | “Stencil Work”, Exhibit 13, Bates No. G-40. | Photograph in creating the poster |
| 13 | Guetta Declaration, ¶ 14, Docket No. 41. | designated as “Fluorescent |
| 14 | | Graffiti stencil” or “Stencil Work.” |
| 15 | | Rather, Guetta indicated that |
| 16 | | incorporated certain aspects of |
| 17 | | the Subject Photograph. Guetta |
| 18 | | Decl., ¶¶ 8, 9, 12, 14 16. |
| 19 | 8. | Disputed. Guetta did not “copy” |
| 20 | Thierry Guetta copied Glen E. Friedman’s | the Subject Photograph and the |
| 21 | Subject Photograph in creating the poster | cited evidence does not indicate |
| 22 | designated as “Broken Records Work”. | that Guetta “copied” the Subject |
| 23 | Exhibit 5, Bates No. G-39, Exhibit 12. | Photograph in creating the poster |
| 24 | Guetta Declaration, ¶ 12, Docket No. 41. | designated as “Broken Records |
| 25 | | Work.” Rather, Guetta indicated |
| 26 | | that incorporated certain aspects |
| 27 | | of the Subject Photograph. See |
| 28 | | |

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| | | Guetta Decl., ¶¶ 8, 9, 12, 14 16. |
| 9. | Thierry Guetta copied Glen E. Friedman's Subject Photograph in creating the poster designated as "Run DMC Old Family" or "Old Photo Work." Exhibit 4, Bates No. G-37, Exhibit 17. Deposition p. 65:7-13; Guetta Declaration ¶ 9, Docket No. 41. | Disputed. Guetta did not "copy" the Subject Photograph and the cited evidence does not indicate that Guetta "copied" the Subject Photograph in creating the poster designated as "Run-DMC Old Family" or "Old Photo Work." Rather, Guetta indicated that incorporated certain aspects of the Subject Photograph. Guetta Decl., ¶¶ 8, 9, 12, 14 16. |
| 10. | Glen E. Friedman did not authorize Thierry Guetta to make, sell or display any reproduction or use of his Run DMC photograph. Dec Friedman ¶ 5. | Undisputed. |

GUETTA'S ADDITIONAL GENUINE ISSUES OF MATERIAL FACT

| No. | Defendant's Additional Material Fact | Evidence |
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| 1. | Guetta is a world renowned artist that sometimes goes by "Mr. Brainwash." | Declaration of Thierry Guetta ("Guetta Decl."), ¶ 2. |
| 2. | Guetta's first major art showing, which was called "Life is Beautiful," was a massive art installation at a former CBS studio in Hollywood, California. | Guetta Decl., ¶ 4. |
| 3. | "Life is Beautiful" ran from June 18, 2008 until August 31, 2008. | Guetta Decl., ¶ 4. |
| 4. | The show included about 200 works Guetta created, including paintings, sculptures, a 20 foot | Guetta Decl., ¶ 4, Exh. A. |

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| 1 | | tall robot constructed out of televisions and metal, | |
| 2 | | and various other works of differing sizes and | |
| 3 | | mediums. | |
| 4 | 5. | Guetta was not paid to put on the show, rather, he | Guetta Decl., ¶ 5. |
| 5 | | paid to rent the space, for demolition, security and | |
| 6 | | so on. | |
| 7 | 6. | At all times, admission to "Life is Beautiful" was | Guetta Decl., ¶ 5. |
| 8 | | free to the public and no concessions were sold. | |
| 9 | 7. | Other than selling his art, Guetta did not offer any | Guetta Decl., ¶ 5. |
| 10 | | goods or services in connection with the "Life is | |
| 11 | | Beautiful" show and could not profit in any other | |
| 12 | | manner therefrom. | |
| 13 | 8. | In addition to the other approximately 200 pieces | Guetta Decl., ¶ 6. |
| 14 | | were a few works Guetta created in part by using | |
| 15 | | the unprotectable aspects of the Photograph of | |
| 16 | | Run-DMC taken by Friedman of the hip-hop group | |
| 17 | | Run-DMC. | |
| 18 | 9. | The Photograph consists of the three members of | Exhibit B to Guetta Decl. |
| 19 | | Run-DMC staring at the camera and posing with | |
| 20 | | bravado: one of the group's members is cupping | |
| 21 | | his fist with his other hand and another member | |
| 22 | | has his arms folded. Each member's face has a | |
| 23 | | serious look that may described as "tough." | |
| 24 | 10. | Each member of Run-DMC is wearing a black | Exhs. B, K and L to Guetta |
| 25 | | Stetson hat, a style of dress the group was and is | Decl.; Friedman Depo., |
| 26 | | well known for. | 100:22-101:8; 114:7-9; |
| 27 | | | 161:3-10. |
| 28 | 11. | The background of the Photograph is a brick | Friedman Depo., 99:9-10. |

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| 1 | | building in Hollis, Queens. | |
| 2 | 12. | What shall be referred to herein as the "Old Photo | Guetta Decl., ¶ 8, Exhs. C |
| 3 | | Work" was created out of a 19th century | and D. |
| 4 | | photograph of a family of four people | |
| 5 | 13. | Guetta purchased the 19th century photograph at | Guetta Decl., ¶ 9. |
| 6 | | a flea market in Paris. | |
| 7 | 14. | After being scanned into a digital format, two of the | Guetta Decl., ¶ 9, Exhs. B, |
| 8 | | family members were removed and replaced with | C and D. |
| 9 | | the images of two of the members of Run-DMC | |
| 10 | | from the digital image of the Photograph. | |
| 11 | 15. | Any of the digital alterations herein referenced | Guetta Decl., ¶ 9. |
| 12 | | were performed by a graphic artist at Guetta's | |
| 13 | | direction. | |
| 14 | 16. | The 19th century photograph made up the majority | Guetta Decl., ¶ 9, Exhs. C |
| 15 | | of the Old Photo Work and other than the removal | and D. |
| 16 | | of two of the family members, essentially no | |
| 17 | | aspects from the older photograph were omitted. | |
| 18 | 17. | Guetta also caused one of the Stetson hats that | Guetta Decl., ¶ 9, Exhs. B, |
| 19 | | the members of Run-DMC were wearing to be | C and D. |
| 20 | | placed on one of the unknown persons in the Old | |
| 21 | | Photo Work so as to make it appear that he was | |
| 22 | | wearing the same style of hat. | |
| 23 | 18. | The images of the two Run-DMC members from | Guetta Decl., ¶ 9, Exhs. B |
| 24 | | the Photograph were digitally altered so as to make | and D. |
| 25 | | them more slender, smaller and to change their | |
| 26 | | relative positions, thereby making their inclusion in | |
| 27 | | the older photograph more spatially appropriate. | |
| 28 | 19. | Additionally, while the images of Run-DMC were | Guetta Decl., ¶ 9, Exhs. B, |

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| 1 | | crisp in the Photograph, the two members' features | C and D. |
| 2 | | were made more dull in the Old Photo Work so as | |
| 3 | | to create the sense that the Run-DMC members | |
| 4 | | were present with the family when the 19th century | |
| 5 | | photograph was taken. | |
| 6 | 20. | The entire image in the Old Photo Work, including | Guetta Decl., ¶ 9, Exhs. B |
| 7 | | the two members of Run-DMC, had a sepia tone, | and D. |
| 8 | | whereas the Photograph was a more standard | |
| 9 | | black and white. | |
| 10 | 21. | An image of an oval near the Old Photo Work's | Guetta Decl., ¶ 9, Exhs. C |
| 11 | | perimeter gave the piece the appearance of an old | and D. |
| 12 | | photograph that had been in a frame with an oval | |
| 13 | | window for some time and subsequently removed. | |
| 14 | 22. | None of the background from the Photograph was | Guetta Decl., ¶ 9, Exhs. B, |
| 15 | | used in the Old Photo Work. | C and D. |
| 16 | 23. | Guetta created prints of the Old Photo Work for | Guetta Decl., ¶ 10. |
| 17 | | sale, some of which were sold during the two and | |
| 18 | | a half month run of the "Life is Beautiful" show and | |
| 19 | | some of which were sold on Guetta's website. | |
| 20 | 24. | Guetta has not offered the Old Photo Work prints | Guetta Decl., ¶ 10. |
| 21 | | for sale since well before the instant litigation | |
| 22 | | began. | |
| 23 | 25. | Postcards incorporating the image were created, | Guetta Decl., ¶ 11. |
| 24 | | but were not used for promotion of the show and | |
| 25 | | were instead given as a memento to people after | |
| 26 | | they attended the show. | |
| 27 | 26. | 46 other postcards bearing images of Guetta's | Guetta Decl., ¶ 11, Exh. E. |
| 28 | | artwork that did not incorporate the Photograph | |

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| 1 | | were also created and distributed in the same | |
| 2 | | manner. | |
| 3 | 27. | The second category of work incorporating the | Guetta Decl., ¶ 12, Exh. F. |
| 4 | | Photograph was a “one-off” (only one was created, | |
| 5 | | no reproductions were made) depicting Run-DMC | |
| 6 | | made from vinyl shards of broken records (the | |
| 7 | | “Broken Records Work”). | |
| 8 | 28. | To create the Broken Records Work, Guetta | Guetta Decl., ¶ 12, Exhs. B |
| 9 | | caused a digital image of the Photograph to be | and F. |
| 10 | | altered so as to remove most of the detail from its | |
| 11 | | subjects, leaving an outline of the group’s features. | |
| 12 | | Any shadings and/or subtleties created by | |
| 13 | | Friedman’s artistic decisions as a photographer | |
| 14 | | (such as lighting, shutter-speed, etc.) were entirely | |
| 15 | | eliminated. | |
| 16 | 29. | The background of the Photograph was discarded. | Guetta Decl., ¶ 12, Exhs. B |
| 17 | | | and F. |
| 18 | 30. | Guetta then had the image projected onto a large | Guetta Decl., ¶ 12, Exh. F. |
| 19 | | piece of wood and painted the image onto the | |
| 20 | | wood. | |
| 21 | 31. | Thereafter, Guetta glued more than 1,000 pieces | Guetta Decl., ¶ 12, Exh. F. |
| 22 | | of broken phonograph records onto the painted | |
| 23 | | wood. | |
| 24 | 32. | The result was a three-dimensional image of Run- | Guetta Decl., ¶ 12, Exh. F. |
| 25 | | DMC created entirely from broken records. | |
| 26 | 33. | The use of broken vinyl gave the Broken Records | Guetta Decl., ¶ 12, Exh. F. |
| 27 | | Work a fragmented appearance. | |
| 28 | 34. | The Broken Records Work further deviated from | Guetta Decl., ¶ 12, Exhs. B |

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| 1 | | the Photograph in that towards the bottom the | and F. |
| 2 | | image of Run-DMC appeared to be dripping. | |
| 3 | 35. | The Broken Records Work was never offered for | Guetta Decl., ¶ 13. |
| 4 | | sale. Other than the “Life is Beautiful” show, the | |
| 5 | | Broken Records Work was never displayed or in | |
| 6 | | any manner marketed by Guetta. | |
| 7 | 36. | The third category of works incorporating the | Guetta Decl., ¶ 14, Exhs. B |
| 8 | | Photograph involved the use of a stencil (the | and G through I. |
| 9 | | “Stencil Works”). As with the Broken Records | |
| 10 | | Work, a digital image of the Photograph was | |
| 11 | | altered so as to remove any shading and nuance. | |
| 12 | 37. | Additionally, the image was altered so that it could | Guetta Decl., ¶ 14, Exhs. B |
| 13 | | be made into a one piece stencil, meaning Guetta | and G through I. |
| 14 | | had to make decisions as to whether and how | |
| 15 | | certain features could be incorporated. In order to | |
| 16 | | create a single stencil, the artist must ensure that | |
| 17 | | ever aspect of the image is connected by a | |
| 18 | | “bridge.” Accordingly, for portion’s of the image | |
| 19 | | that were not near other portions (e.g. a band | |
| 20 | | member’s eye), Guetta had to determine how to | |
| 21 | | bridge that feature to others so as to ensure a one- | |
| 22 | | piece stencil could be created. | |
| 23 | 38. | Thereafter, the image was printed on high-quality, | Guetta Decl., ¶ 14, Exhs. G |
| 24 | | rigid paper and Guetta cut the paper to create the | through I. |
| 25 | | stencil. | |
| 26 | 39. | As with the other works, the background of the | Guetta Decl., ¶ 14, Exhs. G |
| 27 | | Photograph was not incorporated in any manner. | through I. |
| 28 | | | |

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| 40. | Guetta placed the stencil on top of the three canvases with different backgrounds and used black spray paint to superimpose the image of Run-DMC. | Guetta Decl., ¶ 14, Exhs. G through I. |
| 41. | Only the Stencil Work found at Exhibit G, the piece on the white background with graffiti, was ever displayed by Guetta, the other two works were left in storage and never displayed or marketed. | Guetta Decl., ¶ 15. |
| 42. | The Stencil Works were never offered for sale in any manner or otherwise used to promote Guetta or his work. | Guetta Decl., ¶ 15. |
| 43. | The fourth and final category of work incorporating the Photograph was a painted banner of the members of Run-DMC (the Banner Work), which was also a one-off. | Guetta Decl., ¶ 16, Exh. J. |
| 44. | Again, an image incorporating the members of Run-DMC from the Photograph with the shading and other nuances removed was projected onto a canvas and then the image was hand-painted onto the canvas. | Guetta Decl., ¶ 16, Exhs. B and J. |
| 45. | The decisions Friedman made as a photographer, such as lighting and type of film, were not incorporated into the Banner Work, which used only one color (black) of acrylic paint. | Guetta Decl., ¶ 16, Exhs. B and J. |
| 46. | The image of Run-DMC is dripping in the same manner as the Broken Records Work. | Guetta Decl., ¶ 16, Exhs. F and J. |
| 47. | The Banner Work was sold prior to the "Life is Beautiful" show, but was displayed at the "Life is | Guetta Decl., ¶ 17. |

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| 1 | | Beautiful” show and during a three-day music | |
| 2 | | festival in Autumn 2008 in New York. | |
| 3 | 48. | As with the Old Photo Work, postcards | Guetta Decl., ¶ 17. |
| 4 | | incorporating the image were created, but were not | |
| 5 | | used for promotion of the show and were instead | |
| 6 | | given as a keepsake to people after they attended | |
| 7 | | the show. | |
| 8 | 49. | Friedman testified that he took the Photograph | Friedman Depo., 103:23- |
| 9 | | around November 1985. | 104:1. |
| 10 | 50. | Friedman stated that he chose the shoot’s location. | Friedman Depo., 99:9-16. |
| 11 | | | |
| 12 | 51. | Friedman testified that he did not provide Run- | Friedman Depo., 100:22- |
| 13 | | DMC with the hats worn in the Photograph and that | 101:8. |
| 14 | | Run-DMC had been previously photographed with | |
| 15 | | such hats. | |
| 16 | 52. | While Friedman testified that he may have | Friedman Depo., 113:17- |
| 17 | | participated in some of the wardrobe choices, he | 22. |
| 18 | | conceded that the cold weather played a role in | |
| 19 | | what Run-DMC was wearing. | |
| 20 | 53. | Friedman further testified that the group had often | Friedman Depo., 113:24- |
| 21 | | worn matching or similar outfits prior his taking the | 114:9. |
| 22 | | Photograph. | |
| 23 | 54. | Friedman stated that he did not develop the | Friedman Depo., 141:17- |
| 24 | | Photograph. | 19. |
| 25 | 55. | Friedman explained that since Run-DMC’s music | Friedman Depo., 118:21- |
| 26 | | inspired him, he wanted to express this inspiration | 119:4. |
| 27 | | to others and inspire them as much as possible by | |
| 28 | | means of the Photograph. | |

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| 56. | Friedman testified that no one has told him that they would not license or purchase the Photograph because of Guetta's use. | Friedman Depo., 122:9-11. |
| 57. | There are many photographs of Run-DMC from the 1980's that are similar to Friedman's Photograph, including the style of clothing, pose, demeanor and background. | Guetta Decl., ¶ 17, Exhs. K and L. |
| 58. | Run-DMC's eponymous debut album, which was released the year before the Photograph was taken, depicts two of the members of the group in black Stetson hats giving "tough" looks to the camera in essentially the same vein as they do in the Photograph. | Guetta Decl., ¶ 17, Exh. K; Gutman Decl., ¶ 3, Exhs. B and C. |
| 59. | Friedman does not own any of Run-DMC's rights of publicity. | Friedman Depo., 136:18-137:5. |
| 60. | Friedman was well aware that Guetta would argue fair use because Guetta specifically indicated as much in his motion to compel further responses to discovery. | Joint Stipulation in Support of Guetta's Motion to Compel Further Discovery Responses (attached as Exhibit A to Gutman Decl., see ¶ 4), 1:20-22 ("The information sought by the interrogatories and document requests is not only relevant to damages, it is relevant to determining whether Guetta's use of the photograph was fair |

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| | | pursuant to 17 U.S.C. § 107(4).”). |
| 61. | The pose of the member on the right of the Photograph (Run) is commonly referred to as the “B-Boy Stance” in hip-hop culture and Friedman testified that he had seen Run posed in the “B-Boy Stance” previously. | Friedman Depo., 110:2-5. |
| 62. | Friedman “quite possibly” told the member on the left (DMC) to cup his fist and could only testify that he “most likely” put the group in their precise pose | Friedman Depo., 111:2-5, 116:3-5. |

Dated: April 18, 2011

LAW OFFICES OF ALAN S. GUTMAN

/s/ Alan S. Gutman

By: _____

Alan S. Gutman

Attorneys for Defendant and Counter-Claimant
THIERRY GUETTA a/k/a MR. BRAINWASH